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KARL MORELL



September 10, 2008

The Honorable Anne K. Quinlan
Acting Secretary
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423-0001

Re: Finance Docket No. 35176, Georgia Southwestern Railroad, Inc. –
Acquisition and Operation Exemption – CSX Transportation, Inc.

Dear Acting Secretary Quinlan:

Attached for filing are the original and ten copies of a Petition for Waiver of 49
C.F.R. § 1150.42(c).

Please time and date stamp the extra copy of the Petition and return it with our
messenger.

If you have any questions regarding this matter, please contact me.

Sincerely,

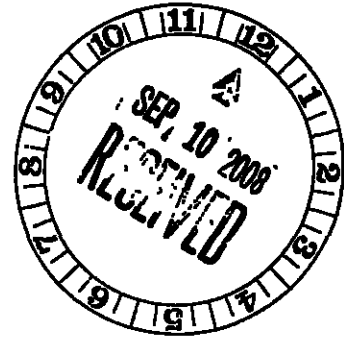
Karl Morell

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Enclosure

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 35176



GEORGIA SOUTHWESTERN RAILROAD, INC.
--ACQUISITION EXEMPTION--
CSX TRANSPORTATION, INC.

PETITION FOR WAIVER OF
49 C.F.R. § 1150.42(e)

EXPEDITED CONSIDERATION REQUESTED

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Attorneys for:
GEORGIA SOUTHWESTERN
RAILROAD, INC.

Dated: September 10, 2008

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB FINANCE DOCKET NO. 35176

**GEORGIA SOUTHWESTERN RAILROAD, INC.
--ACQUISITION EXEMPTION--
CSX TRANSPORTATION, INC.**

**PETITION FOR WAIVER OF
49 C.F.R. § 1150.42(e)**

Georgia Southwestern Railroad, Inc. ("GSWR"), a Class III rail carrier, hereby petitions the Surface Transportation Board ("Board") to waive the 60-day notice requirement set forth in 49 C.F.R. § 1150.42(e). GSWR is concurrently filing a Verified Notice of Exemption pursuant to 49 C.F.R. § 1150.41 *et. seq.*, to acquire a rail line currently owned by CSX Transportation, Inc. ("CSXT"), but operated by GSWR pursuant to an existing lease agreement.

GSWR's projected revenues from operating the line being acquired and its other properties exceed \$5 million thus invoking the employee notice requirements of Section 1150.42(e). GSWR is seeking a waiver of the 60-day notice requirement because, as explained below, no useful purpose would be served by imposing that notice requirement in this proceeding.

BACKGROUND

In Finance Docket No. 31360, *South Carolina Central Railroad Company, Inc. – Purchase and Lease – CSX Transportation, Inc., Lines in Georgia and Alabama* (not printed), served May 4, 1989, the Board's predecessor authorized, among other things, the lease by

GSWR's predecessor of the rail line located from milepost SLC 96.66¹ to the end of the line at Lynn, GA (the "Line"). Since 1989, GSWR has maintained the Line and has been the sole operator of the Line.

CSXT has decided to sell the Line to GSWR rather than renew the lease agreement. The acquisition of the Line will not result in any operational or maintenance changes on the Line. The Line will simply be owned, maintained and operated by GSWR rather than leased, maintained and operated by GSWR. GSWR does not plan to hire any additional employees as a result of the acquisition of the Line. There are no CSXT employees involved in the operation or maintenance of the Line. More importantly, no CSXT jobs will be abolished or relocated as a result of the acquisition of the Line. Consequently, no useful purpose would be served by complying with the 60-day notice requirement.

ARGUMENT

The 60-day notice requirement was adopted by the Board in order to provide employees affected by line sale transactions with advance notice so that they can make "adjustments and decisions relating to their livelihoods." *Acq. Of R. Lines Under 49 U.S.C. 10901 & 10902 – Advance Notice*, 2 S.T.B. 592, 599-600 (1997). In adopting the notice requirement, the Board recognized that under certain circumstances a waiver of the notice provision would be appropriate. *Id.* at 601.

In circumstances similar to the one in this proceeding, the Board has consistently granted waivers of the notice provision. *See, e.g.,* STB Finance Docket No. 34904, *Dakota, Missouri Valley and Western Railroad, Inc – Lease and Operation Exemption – Soo Line Railroad Company* (not printed), served July 24, 2006 (waiver granted where no lessor employees were

¹ The milepost was misdescribed as "SLC 96.99" in the decision authorizing the lease.

affected by the extension and renewal of the preexisting lease arrangement); STB Finance Docket No. 34792, *Portland & Western Railroad, Inc. – Acquisition and Operation Exemption – Union Pacific Railroad Company* (not printed), served November 22, 2006 (waiver granted where acquirer of the exclusive rail freight operating easement was already the sole common carrier on the line under a lease arrangement); and STB Finance Docket No. 34660, *Georgia Central Railway, L P – Acquisition and Operation Exemption – Rail Line of CSX Transportation, Inc.* (not printed), served February 28, 2005, slip op. at 2 (waiver granted where “no CSXT employees will be affected because no CSXT employees have been involved in any operations or maintenance on the line since 1990”)(“*Georgia Central*”).

The situation in this proceeding is virtually identical to the one in *Georgia Central*. In both proceedings the incumbent carrier had leased, maintained and operated the rail line for years and the only proposed change was converting the incumbent carrier’s property interest in the line from a leasehold interest to an ownership interest.

Here, labor notice would serve no useful purpose. No CSXT employee will be affected by the sale because no CSXT employee has performed operations or maintenance on the Line in nearly twenty years. Neither will any GSWR employee be affected by the sale because GSWR will continue to provide the same service and perform the same maintenance as it has for nearly twenty years. The only difference is that GSWR will operate over the Line as owner rather than lessee. Because the transaction will simply convert operations pursuant to a lease to operations over a GSWR-owned line, providing advance labor notice would be a futile act.

For the reasons discussed above, GSWR respectfully requests the Board to waive the 60-day notice requirement set forth in 49 C.F.R. § 1150.42(e).

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Karl Morell", written over a horizontal line.

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